

**Before the  
Federal Communications Commission  
Washington, DC**

In the Matter of	)	
	)	
Request for Review of the Decision of	)	
the Universal Service Administrator	)	
or Waiver by	)	
	)	
Capital City Public Charter School	)	
Washington, DC	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

To: Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

**REQUEST FOR REVIEW OR WAIVER**

Capital City Public Charter School ("School"), through its representative, E-Rate Elite Services, Inc. (EES), hereby respectfully requests that the Federal Communications Commission ("FCC" or "Commission") review a decision of the Universal Service Administrative Company ("USAC") that denied invoice deadline extension for FY 2012 FRN 2379385, and instruct USAC to grant the requested invoicing deadline extension. Alternatively, the School requests that the Commission reach the same results by waiving its rules pursuant to §§ 54.719 through 54.723 of the Commission's rules.<sup>1</sup>

At issue is the School's contention that circumstances, outside of its control and firmly under the control of the service provider, necessitated the invoice deadline extension request for FY 2012 FRN 2379385. Furthermore, the School asserts that the invoice deadline extension request was submitted in compliance with the USAC invoice deadline extension procedures that were in place at that time.

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<sup>1</sup> 47 C.F.R. §§ 54.719 - 54.723

## Application Information

Billed Entity Number:	217160
FCC Form 471 Application Number:	838112
FRN Under Appeal:	2379385
Administrator's Decision on Invoice	
Deadline Extension Request:	January 16, 2015
Administrator's Decision on Appeal:	April 21, 2016
Service Provider:	Cbeyond Communications LLC
Service Provider Identification Number (SPIN):	143027743

## I. Facts

On October 24, 2014 EES filed a request for invoice deadline extension for FRN 2379385, citing the condition "that documentation requirements necessitated third party contacts and certification", which we believed to fit the situation.

The invoice deadline extension request was necessitated by that fact that EES was not able to obtain the signed Service Provider Acknowledgement for the Form 472 ("BEAR") for FRN 2379385 from the service provider, Cbeyond Communications LLC ("Cbeyond"). The BEAR was originally faxed to Cbeyond, to the attention of Tommy Varnell, on September 12, 2014, and a fax confirmation was received, indicating that the fax had been received by the recipient.<sup>2</sup> EES made multiple attempts to contact Mr. Varnell in the following weeks in an attempt to obtain the signed Service Provider Acknowledgement. Therefore, as previously noted, an invoice deadline extension request was submitted to USAC on October 24, 2014. Finally, on November 13, 2014, EES received an email from Cbeyond stating that Mr. Varnell was no longer with the company. We would like to note that as of June 20, 2015, Thomas E Varnell (aka Tommy Varnell), is still listed as the E-Rate contact for Cbeyond, SPIN 143027743, on USAC's website.<sup>3</sup>

On January 16, 2015, EES received notification from USAC that the request for invoice deadline extensions for the aforementioned FRNs was dismissed because "Current deadline extension rules and procedures do not allow approval for the reason submitted."

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<sup>2</sup> Copy attached, see Exhibit A

<sup>3</sup> Copy attached, see Exhibit B

In response, EES filed an appeal with USAC to reconsider the decision to dismiss the invoice deadline extension requests. EES's appeal was subsequently denied on April 21, 2015 citing the denial reason that:

"Administrative procedures related to the payment of support for discounted services establish deadlines for applicants or service providers to submit invoices to USAC. The administrator provides an extension of the deadline under certain conditions. Those Conditions are documented in the Reference area on the USAC website. (See Invoice Extensions for more information.) Your request did not provide information that satisfied those conditions..."<sup>4</sup>

## **II Discussion**

The School and EES are submitting this Request for Review or Waiver to the Commission based on the following points:

- The request for invoice deadline extensions and subsequent appeal to USAC were made in good faith, and extraordinary circumstances existed that supported the request
- The request for invoice deadline extension was filed in accordance with the guidance posted on USAC's website

### Request Made in Good Faith and Extraordinary Circumstances

In accordance with the BEAR invoicing process the School paid 100% of the monthly bills for the services related to FRN 2379385.

In the E-Rate Modernization Order, the Commission noted that:

"With respect to invoicing deadlines for earlier funding years, absent extraordinary circumstances justifying the failure to timely submit invoices, we expect the Bureau and USAC to deny any requests or appeals seeking an invoicing deadline extension of more than 12 months after the last date to invoice."<sup>5</sup>

We feel circumstances such as that described above meet the Commission's intent with respect to the establishment of invoicing deadlines in the E-Rate Modernization Order<sup>6</sup>, and further suggest the situation described above represents the type of extraordinary circumstances described by the

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<sup>4</sup> Copy attached, see Exhibit C

<sup>5</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014), ¶ 242

<sup>6</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014), ¶ 242

Commission, one in which the service provider was not responsive to requests to certify a BEAR and has not submitted the necessary paperwork to USAC to update contact information after an employee departure.

#### Invoice Deadline Extension Request Filed in Accordance with Posted Guidance

Per USAC's website<sup>7</sup>, and included in the Administrator's Decision on Appeal, there are a number of conditions under which invoice deadline extensions may be granted. Included in this list is "Documentation requirements that necessitate third-party contact or certification". It is our belief that this condition fits this situation because the service provider was required to sign the BEAR Form in order for the School to receive its E-Rate reimbursement for FRN 2379385.

It appears that USAC's dismissal of the October 24, 2014 invoice deadline extension request because "Current deadline extension rules and procedures do not allow approval for the reason submitted" as well as the subsequent appeal denial because:

"...invoicing deadlines for earlier funding years, absent extraordinary circumstances justifying the failure to timely submit invoices, we expect the Bureau and USAC to deny any requests or appeals seeking an invoicing deadline extension of more than 12 months after the last date to invoice..."

are directly related to guidance and rule changes stated in the E-rate Modernization Order.

We respectfully suggest that the rules and procedures noted in USAC's dismissal and denial reasons noted above were not in effect at the time the invoice deadline extension request was submitted to USAC. Paragraph 240 of the E-rate Modernization Order states:

"We adopt a rule allowing applicants to seek and receive from USAC a single one-time invoicing extension for any give funding request, provided the extension request is made no later than what would otherwise be the deadline for submitting invoices: 120 days after the last day to receive service, or the date of the FCC form 486 notification letter."<sup>8</sup>

This ruling codified USAC's existing invoice filing deadline; however, the amended rule, 47 C.F.R. §54.514, did not become effective until December 18, 2014.<sup>9</sup> Notwithstanding, the invoice

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<sup>7</sup> <http://www.usac.org/sl/applicants/step07/invoice-extensions.aspx>

<sup>8</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014), ¶ 240

<sup>9</sup> *Modernization of the Schools and Libraries "E-Rate" Program*, 79 Fed. Reg. 68632 (November 18, 2014)(to be codified at 47 C.F.R. pt. 54).

deadline extension was submitted within the relevant invoice period, in compliance with the invoice deadline guidelines and procedures cited by USAC in its appeal denial reason.

### **III Conclusion**

Throughout its application process, the School has complied with all E-Rate program rules and regulations. No waste, fraud, or abuse of E-Rate funds has occurred, and it would serve the public interest for the Commission to grant the requested invoice deadline extension for FRN 2379385 and would alleviate financial hardship for the School. Furthermore, we believe there were no violations of E-Rate program rules or regulations that warranted denial of the invoice deadline extension or the subsequent appeal. Therefore, we respectfully request that the Commission grant this appeal and find that the School's invoice deadline extension request for FRN 2379385 was submitted in compliance with the invoice deadline guidelines and procedures that were in place at the time of the requests.

Alternatively, the Commission has previously established that a rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>10</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>11</sup> Therefore, in the event that the Commission does find that the School's invoice deadline extension request for FRN 2379385 was not submitted in compliance with the invoice deadline guidelines and procedures that were in place at the time of the request, we request that the Commission grant the School a waiver of the invoice deadline for FRN 2379385.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "C. Lenhardt", written in dark ink.

Christopher Lenhardt, CFE  
E-Rate Elite Services, Inc.

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<sup>10</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular)

<sup>11</sup> WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166